



STATE OF INDIANA
ALCOHOL AND TOBACCO COMMISSION

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Antonio Garcilazo)
d/b/a La Marea Bar)
3401 W. Western Avenue)
South Bend, IN 46619)

Permit #RR71-01784

PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

I.

BACKGROUND OF THE CASE

The Antonio Garcilazo, d/b/a La Marea Bar, 3401 W. Western Avenue, South Bend, Indiana 46619 ("Permittee") is the holder of an Alcohol and Tobacco Commission type 210 permit, permit #RR71-01784. The Permittee is charged with the following violations occurring on August 2, 2009:

Furnishing alcohol beverage to minor, Indiana Code 7.1-5-7-8.

Allowing a minor to loiter. Indiana Code 7.1-5-7-10 (b).

The hearing on the merits was conducted before Hearing Judge E. Edward Dunsmore on April 22, 2010. The Alcohol and Tobacco Commission ("Commission") was represented by the Prosecutor, Jennifer D. Drewry. The Permittee appeared by Antonio Garcilazo, Owner. Witnesses were sworn, evidence was heard, the parties presented final arguments and the matter was taken under advisement. Hearing Judge E. Edward Dunsmore, having reviewed the tape recorded transcript of the hearing, the evidence submitted to the Commission at the hearing and the contents of the entire file, now tenders his Proposed Findings of Fact and Conclusions of Law for recommendation to members of the Commission.

II.

EVIDENCE SUBMITTED BEFORE THE COMMISSION

The following exhibits were introduced by the Prosecutor against the Permittee in this cause:

1. The contents of the entire Commission file ("ATC file").
2. Indiana State Excise Police citation report regarding incident occurring on August 2, 2009, at La Marea Bar, South Bend, IN.
3. Copy of Indiana Excise Police incident report showing charges issued to Antonio Garcilazo, d/b/a La Marea Bar, for Furnishing Alcoholic Beverages to a Minor in violation of IC 7.1-5-7-8 and Allowing a Minor to Loiter in violation of IC 7.1-5-7-10(b) on August 2, 2009.
4. Report of permit visit and evaluation issued to permittee on August 8, 2009.
5. Copy of cause profile report and copy of photograph of Tomas Vargas, a minor, age 20.
6. A copy of Indiana State Excise Police report regarding an incident occurring on August 2, 2009, at 4032 Michigan Street, South Bend, IN.

The following exhibits were introduced by the Permittee on behalf of the Permittee in this cause:

None

The following individuals testified on behalf of the Prosecutor against the Permittee in this cause:

1. Indiana Excise Police Officer Kayla Dawson.

The following individuals testified on behalf of the Permittee in this cause:

1. Antonio Garcilazo, owner of La Marea Bar.

III.
FINDINGS OF FACT

1. The Permittee, Antonio Garcilazo, d/b/a La Maria Bar, 3401 W. Western Avenue, South Bend, Indiana 46619 is the holder of a type 210 permit, permit #RR71-01784 (ATC file).
2. The Permittee, Antonio Garcilazo, admitted that he, Antonio Garcilazo, was the person working at the La Maria bar on August 2, 2009, at the time the alleged violation was to have occurred, but denies that the sale occurred as alleged (ATC file; permit violation hearing).
3. On Thursday, August 2, 2009, at approximately 1:20 a.m., Indiana Excise Police Officers Kayla Dawson and Jeremy Reed were conducting an investigation at the business known as La Marea Bar located at 3401 W. Western Avenue, South Bend, Indiana, 46619 (ATC file; permit violation hearing).
4. Officers Dawson and Reed were parked in the back parking lot of La Marea Bar in an unmarked police commission on August 2, 2009 (ATC file; permit violation hearing).
5. On August 2, 2009, the officers observed a silver colored Ford, bearing Indiana registration QL6883, pull into the bar parking lot and park by the entrance to the bar (ATC file; permit violation hearing).
6. A young appearing Hispanic male exited the automobile and entered La Marea Bar. He shortly exited the bar with approximately twenty-four cans of alcoholic beverage, which he placed in the back seat of the vehicle and drove the vehicle out of the bar's parking lot and onto Western Avenue and Sheridan (ATC file; permit violation hearing).
7. Officer Dawson observed that the vehicle did not have a license plate light as required by law and initiated a stop of the vehicle (permit violation hearing; ATC file).
8. Officer Dawson asked the driver for a driver's license and to state his age and date of birth. The driver stated his age as twenty years of age and his date of birth as 08/19/1988, confirming his age of twenty. He stated that he did not have a driver's license and further identified himself as Tomas Vargas. Officer Dawson, upon running a license check through the Indiana State Police Bremen Post, learned that Tomas Vargas held a learner's permit, which was suspended, and that he had never been issued an operator's license (permit violation hearing; ATC file).
9. At that point in the vehicle stop, the Excise officers were informed by radio transmission of a very large drinking party in South Bend along with a request for immediate assistance. Officer Reed photographed Mr. Vargas and confiscated the alcoholic beverages from the vehicle. They consisted of twenty four cans of Modelo beer. (permit violation hearing; ATC file).
10. Officer Dawson completed arrest tickets for charges of Minor in Possession of Alcoholic Beverages, Operator having never received a license, No rear plate illumination, Driving while suspended-infracton, and Minor entering a tavern. The tickets were served on and explained to Mr. Vargas and copies given to him. The passenger in the vehicle, who had a valid license, drove from the scene of the stop. The alcoholic beverages were later destroyed in the field. (ATC file; permit violation hearing).

11. On Saturday August 8, 2009, at approximately 12:32 a.m., Officers Dawson and Reed returned to La Marea Bar to issue the Notice of Violation for the sale of alcoholic beverages to Minor Vargas. (permit violation hearing: ATC file).
12. The Permittee/owner contends that:
 - a. He should not have been issued a notice of violation because it was not issued on the same day and, in fact, not until six days later. As such, he is unable to adequately remember the details of the transaction resulting in the violation and appropriately respond to it.
 - b. He checks identification of everyone who looks underage.
 - c. He believes he was shown a fake ID and that the minor, Mr. Vargas, simply did not show the fake ID to the Excise Police, or threw it away.
 - d. He believes the Excise Police spend an inordinate amount of time sitting outside his premises on a regular basis.
(Permit violation hearing)
13. Excise Police officer Dawson testified that the date of August 8, 2010, was the first time she was next on duty and as such served the notice of violation to the permittee on that date (Permit violation hearing).

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over these proceedings and over this permittee. Indiana Code 7.1-3-19-1; Indiana Code 7.1-3-23-2
2. A minor means a person less than 21 years of age. Indiana Code 7.1-1-3-25
3. It is unlawful for a permittee to recklessly permit a minor to be in the prohibited place beyond a reasonable time in which an ordinary, prudent person can check identification, or confirm the age of a patron. Indiana Code 7.1-5-7-10(b)
4. A prohibited place includes a tavern, a bar, or other public place where alcoholic beverages are sold, bartered, exchanged, and given away, provided or furnished. Indiana Code 7.1-5-7-10(a)
5. It is unlawful for a permittee to allow a minor on his permit premises, except as provided in Indiana Code 7.1-5-7-11 and Indiana Code 7.1-5-7-13 --- 905 IAC 1-15.2-1(b); Indiana Code 7.1-2-3-7.
6. It is unlawful for a person to recklessly, knowingly, or intentionally sell, barter, exchange, provide, or furnish an alcoholic beverage to a minor. Indiana Code 7.1-5-7-8.
7. Defenses to furnishing alcohol are provided in Indiana Code 7.1-5-7-5.1.
8. The burden of proof rests upon the permittee (seller) to establish the defense provided in Indiana Code 7.1-5-7-5.1; *Mulread v. State*, 7 N.E. 884 (Ind. 1886); *Fehn v. The State*, 29 N.E. 1137 (Ind. App. 1892)
9. The weight of the evidence and burden of proof do not sustain any of the defenses to unlawfully furnishing alcohol to a minor and allowing a minor to loiter as provided for in IC 7.1-5-7-5.1.
10. The weight of the evidence, burden of proof and status of the law do not sustain, either conjunctively or alternatively, the contentions of the permittee contained in paragraph 12a-d above as a defense. (IC 7.1-5-7-17: U.S. Constitution. Amend. 5; Ind. Const. Article 1, §14)
11. The permittee, Antonio Garcilazo, d/b/a La Marea Bar, is guilty of recklessly furnishing alcoholic beverage(s) to a minor, pursuant to Indiana Code 7.1-5-7-8 and allowing a minor to loiter pursuant to Indiana Code 7.1-5-7-10 (b).

WHEREFORE, the Hearing Judge determines from the presentation and review of the evidence that the Prosecution HAS PROVEN that the Permittee, Antonio Garcilazo, d/b/a La Marea Bar, has violated the following statutes:

Recklessly furnishing alcoholic beverage(s) to minor(s), in violation of Indiana Code 7.1-5-7-8; and
Allowing a minor to loiter in violation of Indiana Code 7.1-5-7-10 (b).

WHEREFORE, the Hearing Judge recommends the following disposition to the Commission:

Fine in the amount of five hundred (\$500.00)

Dated: _____

E. Edward Dunsmore Hearing Judge
Alcohol and Tobacco Commission